IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

MFA.No. 84 of 1999(B)

OP.185/1998 of FAMILY COURT, KOZHIKODE
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APPELLANT/PETITIONER:

ASHOKAN, RETIRED JUNIOR HEALTH INSPECTOR, KOZHIKODE, PUNNAKKOT VEEDU, THAMARASSERY, VALICUT.

BY ADV. SRI.V.G.ARUN

RESPONDENT/RESPONDENT:

G.SUSEELA DEVI, D/O GOVINDAN VAIDHYAR, RETIRED TEACHER, AMBADI, KADUMKODE, KARIKKARAPPULLY, PALAKKAD.

BY ADV. SRI.JACOB ABRAHAM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 84 of 1999

JUDGMENT

Balachandran, J.

A retired Junior Health Inspector, whose petition for divorce filed under Sections 13(1)(i) and 13(1)(ia) of the Hindu Marriage Act was dismissed by the Judge, Family Court, Kozhikode, is the appellant. His marriage with the respondent was solemnized on 10.4.1970 and two children were born out of the said wedlock and they were aged respectively 26 and 24 in 1998, when the petition for divorce was filed. He alleged that on 3.5.1996 he had witnessed the respondent indulging in sexual intercourse with one Suresh Kumar, Typist-cum-Clerk of the Collectorate, Palakkad; that one week thereafter he shifted his residence to Chelannur and he filed O.P.No.329/97 for restitution of conjugal rights, but he did not prosecute the same due to the adamant attitude of the respondent and that since the respondent is living in adultery and

also because she has treated him with cruelty, he is entitled to a decree for dissolution of marriage. The respondent remains ex parte before this Court and remained absent and ex parte in the court below as well.

2. The petitioner gave evidence as PW1, consistent with the allegation in his petition for divorce. The court below dismissed the petition for divorce for the reason that he has not impleaded the adulterer Suresh Kumar as a co-respondent, though he has furnished the name and address of the said Suresh Kumar in paragraph 4 of the petition and also for the reason that though, according to him, he was treated with cruelty by the respondent in the year 1996, he has condoned the said cruelty and filed O.P.No.329/97 for restitution of conjugal rights and therefore, no decree of divorce can be granted to the appellant/ petitioner.

3. We have heard the counsel for the appellant/ petitioner. The parties are Hindus governed by the Hindu Marriage Act. The respondent is alleged to

have had sexual intercourse with one Suresh Kumar on 3.5.1996. The cruel treatment meted out to the appellant is also alleged to have taken place in 1996.It is, thereafter, that in 1997, O.P.No.329/97 was filed by the appellant for restitution of conjugal rights. This means that he has condoned the act complained of, attracting Section 13(1)(i) of the Hindu Marriage Act and has also condoned the cruelty alleged to have been meted out to him. Hence, Section 23(1)(b) of the Hindu Marriage Act is a bar to grant the relief prayed for by the appellant. Dismissal of his petition for divorce by the Judge, Family Court, Kozhikode, in the circumstances, is correct, legal and justified. There is no merit in this appeal.

This appeal, in the circumstances, is dismissed.

(J.B.Koshy, Judge)

20th July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.84 of 1999

JUDGMENT

20th July, 2007